

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b)(1)(i):

Acetylene, black.
 Agar, bulk.
 Anise.
 Antimony, as metal or oxide.
 Asbestos, amosite, chrysotile, and crocidolite.
 Bamboo shoots.
 Bananas.
 Bauxite.
 Beef, corned, canned.
 Beef extract.
 Bephenium hydroxynapthoate.
 Bismuth.
 Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
 Brazil nuts, unroasted.
 Cadmium, ores and flue dust.
 Calcium cyanamide.
 Capers.
 Cashew nuts.
 Castor beans and castor oil.
 Chalk, English.
 Chestnuts.
 Chicle.
 Chrome ore or chromite.
 Cinchona bark.
 Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
 Cocoa beans.
 Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
 Coffee, raw or green bean.
 Colchicine alkaloid, raw.
 Copra.
 Cork, wood or bark and waste.
 Cover glass, microscope slide.
 Crane rail (85-pound per foot).
 Cryolite, natural.
 Dammar gum.
 Diamonds, industrial, stones and abrasives.
 Emetine, bulk.
 Ergot, crude.
 Erythrityl tetranitrate.
 Fair linen, altar.
 Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
 Goat hair canvas.
 Goat and kidskins.
 Grapefruit sections, canned.
 Graphite, natural, crystalline, crucible grade.
 Hand file sets (Swiss pattern).
 Handsewing needles.
 Hemp yarn.
 Hog bristles for brushes.
 Hyoscine, bulk.
 Ipecac, root.
 Iodine, crude.
 Kaurigum.
 Lac.
 Leather, sheepskin, hair type.
 Lavender oil.
 Manganese.
 Menthol, natural bulk.
 Mica.
 Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
 Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
 Modacrylic fur ruff.
 Nitroguanidine (also known as picrite).
 Nux vomica, crude.
 Oiticica oil.
 Olive oil.
 Olives (green), pitted or unpitted, or stuffed, in bulk.
 Opium, crude.
 Oranges, mandarin, canned.
 Petroleum, crude oil, unfinished oils, and finished products.
 Pine needle oil.
 Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
 Pyrethrum flowers.
 Quartz crystals.
 Quebracho.
 Quinidine.
 Quinine.
 Rabbit fur felt.
 Radium salts, source and special nuclear materials.
 Rosettes.
 Rubber, crude and latex.
 Rutile.
 Santonin, crude.
 Secretin.
 Shellac.
 Silk, raw and unmanufactured.
 Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
 Spices and herbs, in bulk.
 Sugars, raw.
 Swords and scabbards.
 Talc, block, steatite.
 Tantalum.
 Tapioca flour and cassava.
 Tartar, crude; tartaric acid and cream of tartar in bulk.
 Tea in bulk.
 Thread, metallic (gold).
 Thyme oil.
 Tin in bars, blocks, and pigs.
 Triprolidine hydrochloride.
 Tungsten.
 Vanilla beans.
 Venom, cobra.
 Water chestnuts.
 Wax, carnauba.

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Wire glass.

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

(b) This list will be published in the FEDERAL REGISTER for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502).

[64 FR 72419, Dec. 27, 1999, as amended at 69 FR 34241, June 18, 2004; 70 FR 11743, Mar. 9, 2005]

25.105 Determining reasonableness of cost.

(a) The contracting officer—

(1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and

(2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under Subpart 25.4.

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(1) 6 percent, if the lowest domestic offer is from a large business concern; or

(2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see Subpart 19.5).

(c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation

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factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at Subpart 25.5.)

Subpart 25.2—Buy American Act—Construction Materials

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a–10d) and Executive Order 10582, December 17, 1954. It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Policy.

Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may acquire foreign construction materials without regard to the restrictions of the Buy American Act:

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.103(b)(1) also apply if any of those articles are acquired as construction materials.

(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.204.

(b) *Determination and findings.* When a determination is made for any of the